

SENATE BILL 2856
By Kilby

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 63, to enact the Tennessee Orthotics, Prosthetics, and Pedorthics Practice Act of 2004.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Orthotics, Prosthetics, and Pedorthics Practice Act."

SECTION 2. The general assembly finds that:

(1) The practice of orthotics and prosthetics in the state of Tennessee is a healing art, as defined in Tennessee Code Annotated, Section 63-1-102(2), and a profession recognized by the American Medical Association, with educational standards established by the Commission on Accreditation of Allied Health Education Programs and the National Commission on Orthotic and Prosthetic Education (NCOPE). Likewise, the practice of pedorthics in the state of Tennessee is a healing art, as it is recognized as an allied health profession by the American Academy of Orthopaedic Surgeons, with educational standards established by the Board for Certification in Pedorthics.

(2) The increasing population of elderly and physically challenged individuals who need orthotic, prosthetic, and pedorthic services requires that the orthotic, prosthetic, and pedorthic professions be regulated to ensure the provision of high-quality services and devices. The people of Tennessee deserve the best care available, and will benefit from the assurance of initial and ongoing professional competence of the orthotists, prosthetists, and pedorthists practicing in this state.

(3) The practice of orthotics, prosthetics, and pedorthics serves to improve and enhance the lives of individuals with disabilities by enabling them to resume productive lives following serious illness, injury, or trauma. Unregulated dispensing of orthotic,

prosthetic, and pedorthic care does not adequately meet the needs or serve the interests of the public.

(4) In keeping with state requirements imposed on similar healing arts, licensure of the orthotic, prosthetic, and pedorthic professions will help ensure the health and safety of consumers, as well as maximize their functional abilities and productivity levels. This act shall be liberally construed to best carry out these subjects and purposes.

SECTION 3. As used in this act:

(1) "Assistant" means a person who assists an orthotist, prosthetist, or prosthetist/orthotist with patient care services and fabrication of orthoses or prostheses under the supervision of a licensed orthotist or prosthetist.

(2) "Board" means the Tennessee board of orthotics, prosthetics, and pedorthics.

(3) "Custom fabricated and fitted device" means that an orthosis, prosthesis, or pedorthic device is fabricated to original measurements or a mold for use by a patient in accordance with a prescription and which requires substantial clinical and technical judgment in its design and fitting.

(4) "Custom fitted device" means a prefabricated orthosis, prosthesis, or pedorthic device sized or modified for use by the patient in accordance with a prescription, and which requires substantial clinical judgment and substantive alteration for appropriate use.

(5) "Department" means the department of health.

(6) "Director" means the director of the division of health related boards.

(7) "Commissioner" means the commissioner of health.

(8) "Division" means the division of health related boards.

(9) "Facility" means the business location where orthotic, prosthetic, or pedorthic care is provided. In the case of an orthotic/prosthetic facility, it has the appropriate clinical and laboratory space and equipment to provide comprehensive orthotic or prosthetic care and, in the case of a pedorthic facility, it has the appropriate clinical space and equipment to provide pedorthic care. Licensed orthotists, prosthetists, and

pedorthists must be available to either provide care or supervise the provision of care by non-licensed staff.

(10) "Level of competence" means a hierarchical position that an individual occupies within a field or profession relative to other practitioners in the profession.

(11) "Licensed orthotist" means a person licensed under this act to practice orthotics and who represents himself or herself to the public by title or description of services that includes the term "orthotic", "orthotist", "brace", or a similar title or description of services.

(12) "Licensed pedorthist" means a person licensed under this act to practice pedorthics and who represents himself or herself to the public by the title or description of services that include the term "pedorthic", "pedorthist", or a similar title or description of services.

(13) "Licensed physician" means a person licensed under Tennessee Code Annotated, Title 63, Chapter 6.

(14) "Licensed podiatrist" means a person licensed by the board of registration in podiatry.

(15) "Licensed prosthetist" means a person licensed under this act to practice prosthetics and who represents himself or herself to the public by title or description of services that includes the term "prosthetic", "prosthetist", "artificial limb", or a similar title or description of services.

(16) "Orthosis" means a custom-designed, fabricated, fitted or modified device to correct, support or compensate for a neuro-musculoskeletal disorder or acquired condition. "Orthosis" does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices that are carried in stock and sold as "over-the-counter" items by a drug store, department store, corset shop, or surgical supply facility.

(17) "Orthotic and prosthetic education program" means a course of instruction accredited by the Commission on Accreditation of Allied Health Education Programs, the

National Commission on Orthotic and Prosthetic Education (NCOPE) or other training program approved by the board, consisting of:

(A) An adequate curriculum of training and instruction in math, physics, biology, and psychology; and

(B) A specific curriculum in orthotic or prosthetic courses, including:

(i) Lectures covering pertinent anatomy, biomechanics, pathomechanics, prosthetic-orthotic components and materials, training and functional capabilities, prosthetic or orthotic performance evaluation, prescription considerations, etiology of amputations and disease processes necessitating prosthetic or orthotic use, and medical management;

(ii) Subject matter related to pediatric and geriatric problems;

(iii) Instruction in acute care techniques, such as immediate and early post-surgical prosthetics and fracture bracing techniques; and

(iv) Lectures, demonstrations, and laboratory experiences related to the entire process of measuring, casting, fitting, fabricating, aligning, and completing prostheses or orthoses.

(18) "Orthotic and prosthetic scope of practice" means a list of tasks that describes the role played by an occupant of a particular "Level of Competence," what such person can be expected to do and not to do, and such person's relation to others in the field. These should be based on internationally accepted standards of orthotic and prosthetic care as outlined by the International Society of Prosthetics and Orthotics' professional profile for Category I orthotic and prosthetic personnel.

(19) "Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(20) "Orthotist" means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom-designed, fabricated, modified and fitted external orthosis to an orthotic patient, based on a clinical assessment and a physician's prescription, to restore physiological function or cosmesis.

(21) "Over-the-counter device" means a prefabricated, mass-produced device that is prepackaged and requires no professional advice or judgment in either size selection or use, including fabric or elastic supports, corsets, generic arch supports and elastic hoses.

(22) "Off-the-shelf device" means a prefabricated prosthesis or orthosis sized or modified for use by the patient in accordance with a prescription and which does not require substantial clinical judgment and substantive alteration for appropriate use.

(23) "Pedorthic device" means therapeutic footwear, foot orthoses for use at the ankle or below, and modified footwear made for therapeutic purposes. "Pedorthic device" does not include non-therapeutic accommodative inlays or non-therapeutic accommodative footwear, regardless of method of manufacture, shoe modifications made for non-therapeutic purposes, unmodified, over-the-counter shoes, or prefabricated foot care products.

(24) "Pedorthic education program" means a course of instruction accredited by the Board for Certification in Pedorthics or other training program approved by the board consisting of:

(A) A basic curriculum of instruction in foot-related pathology of diseases, anatomy, and biomechanics;

(B) A specific curriculum in pedorthic courses, including lectures covering shoes, foot orthoses, and shoe modifications, pedorthic components and materials, training and functional capabilities, pedorthic performance evaluation, prescription considerations, etiology of disease

processes necessitating use of pedorthic devices, medical management, subject matter related to pediatric and geriatric problems; and

(C) Lectures, demonstrations, and laboratory experiences related to the entire process of measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices.

(25) "Pedorthic scope of practice" means a list of tasks with relative weight given to such factors as importance, criticality, and frequency based on nationally accepted standards of pedorthic care as outlined by the Board for Certification in Pedorthics' comprehensive analysis with an empirical validation study of the profession performed by an independent testing company.

(26) "Pedorthics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(27) "Pedorthist" means a person who measures, designs, fabricates, fits, or services pedorthic devices and assists in the formulation of the order of pedorthic devices as ordered by a licensed physician for the support or correction of disabilities caused by neuro-musculoskeletal diseases, injuries, or deformities.

(28) "Person" means a natural person.

(29) "Prosthesis" means a custom designed, fabricated, fitted, or modified device to replace an absent external limb for purposes of restoring physiological function or cosmesis. "Prosthesis" does not include artificial eyes, ears, or dental appliances, cosmetic devices such as artificial breasts, eyelashes, or wigs, or other devices that do not have a significant impact on the musculoskeletal functions of the body.

(30) "Prosthetics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing prosthesis under an order from a licensed physician.

(31) "Prosthetist" means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated,

modified, and fitted external limb prosthesis to a prosthetic patient, based on a clinical assessment and a physician's prescription, to restore physiological function or cosmesis.

(32) "Prosthetist/orthotist" means a person who practices both disciplines of prosthetics and orthotics and who represents himself or herself to the public by title or by description of services.

(33) "Resident" means a person who has completed an education program in either orthotics or prosthetics and is continuing such person's clinical education in a residency program approved by the board.

(34) "Technician" means a person who assists an orthotist, prosthetist, prosthetist/orthotist, or pedorthist with fabrication of orthoses, prostheses, or pedorthic devices based on clinical assessment and a physician's prescription, but does not provide direct patient care.

SECTION 4. This act shall not be construed to prohibit::

(1) A physician licensed in this state from engaging in the practice for which such physician is licensed;

(2) A person licensed in this state under any other act from engaging in the practice for which such person is licensed;

(3) The practice of orthotics, prosthetics, or pedorthics by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;

(4) The practice of orthotics, prosthetics, or pedorthics by:

(A) A student enrolled in a school of orthotics, prosthetics, or pedorthics;

(B) A resident continuing such resident's clinical education in a residency approved by the board; or

(C) A student in a qualified work experience program or internship in pedorthics;

(5) The practice of orthotics, prosthetics, or pedorthics by one who is an orthotist, prosthetist, or pedorthist licensed under the laws of another state or territory of the United

States or another country and has applied in writing to the board, in a form and substance satisfactory to the division, for a license as orthotist, prosthetist, or pedorthist and who is qualified to receive the license under Section 9 until:

(A) The expiration of one (1) year after the filing of the written application;

(B) The withdrawal of the application; or

(C) The denial of the application by the department;

(6) A person licensed by this state as a physical therapist or occupational therapist from engaging in such person's profession; or

(7) A physician licensed by the Board of Registration in Podiatry from engaging in such physician's profession.

SECTION 5.

(a) The division shall exercise the powers and duties prescribed by Tennessee Code Annotated, Title 63, Chapter 1, for the administration of licensure acts and shall exercise other powers and duties necessary for effectuating the purposes of this act.

(b) The division, with the consent of the board, may promulgate rules to administer and enforce this act including, but not limited to, fees for original licensure and renewal and restoration of licenses and may prescribe forms to be issued to implement its rules. At a minimum, the rules promulgated by the division shall include standards and criteria for licensure and for professional conduct and discipline. The division shall consult with the board in promulgating rules. Notice of proposed rulemaking shall be transmitted to the board, and the division shall review the board's response and any recommendations made in writing with proper explanation of deviations from the board's recommendations and response.

(c) The division at any time may seek the expert advice and knowledge of the board on any matter relating to the enforcement of this act.

(d) The division may promulgate rules as necessary to establish eligibility for facility accreditation and standards.

(e) The division may promulgate rules as necessary to establish eligibility for registration of assistants or technicians.

SECTION 6.

(a) There is hereby established within the department of health, division of health related boards, a board of orthotics, prosthetics, and pedorthics, which shall consist of five (5) voting members to be appointed by the governor as follows: three (3) members shall be practicing licensed orthotists, licensed prosthetists, or licensed pedorthists. These members may be licensed in more than one discipline and their appointments must equally represent all three (3) disciplines. In addition, these three (3) members shall represent equally the three (3) grand divisions of the state. Each practicing licensed orthotist, prosthetist, or pedorthist appointed by the governor shall be from a list of three (3) nominations submitted by Tennessee Orthotic and Prosthetic Facilities, Incorporated. Provided, however, during the transition period prior to the promulgation of rules regarding licensure, orthotists, prosthetists, or pedorthists shall be eligible for appointment if they have been continuously practicing within the state for five (5) years. One (1) member shall be a member of the public who is a consumer of orthotic, prosthetic, or pedorthic professional services. One (1) member shall be a licensed physician. The board shall choose a chairman by vote from among its members.

(b) Each member of the board shall serve a term of three (3) years, except that of the initial appointments to the board, one (1) member shall be appointed for one (1) year, two (2) members shall be appointed for two (2) years, and two (2) members shall be appointed for three (3) years. Each member shall hold office and execute such member's board responsibilities until the qualification and appointment of such person's successor. No member of the board shall serve more than eight (8) consecutive years or two (2) full terms, whichever is greater.

(c) Members of the board shall receive fifty dollars (\$50.00) per diem when actually engaged in the discharge of official duties, and in addition, shall be reimbursed for all travel and other necessary expenses. All expenses shall be claimed and paid in accordance with travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) A quorum of the board shall consist of a majority of board members currently appointed.

(e) The commissioner may terminate the appointment of any member for cause, which, in the opinion of the commissioner, reasonably justifies termination, which may include, but is not limited to, a board member who does not attend two (2) consecutive meetings.

SECTION 7.

(a) Individual members of the board shall be immune from suit in any action based upon any disciplinary proceeding or other activities performed in good faith as members of the board.

(b) The board shall annually elect a secretary who shall be licensed under this act.

SECTION 8. An application for an original license shall be made to the board in writing on a form prescribed by the division and shall be accompanied by the required fee, which shall not be refundable. An application shall require information that in the judgment of the board will enable the board to pass on the qualifications of the applicant for a license.

SECTION 9.

(a) To qualify for a license to practice orthotics or prosthetics, a person shall:

- (1) Possess a baccalaureate degree or equivalent semester hours to four
- (4) years of study at a four-year college or university or other academic program approved by the board;

(2) Have completed the amount of formal training, including, but not limited to, any necessary hours of classroom education and clinical practice established and approved by the board;

(3) Complete a clinical residency in the professional area for which a license is sought in accordance with standards, guidelines, or procedures for residencies inside or outside this state established and approved by the board.

The majority of training must be devoted to services performed under the supervision of a licensed practitioner of orthotics or prosthetics or a person who has obtained certification from the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification;

(4) Pass all written, practical, and oral examinations that are required and approved by the board; and

(5) Be qualified to practice in accordance with commonly accepted standards of orthotic and prosthetic care acceptable to the board.

(b) To qualify for a license to practice pedorthics, a person shall:

(1) Possess a high school diploma or other course of study approved by the board;

(2) Have completed the amount of formal training, including, but not limited to, any necessary hours of classroom education and clinical practice established and approved by the board;

(3) Pass all examinations that are required and approved by the board; and

(4) Be qualified to practice in accordance with commonly accepted standards of pedorthic care acceptable to the board.

(c) The board shall adopt rules as necessary to set the standards and requirements.

(d) A person may be licensed in more than one discipline.

SECTION 10.

(a) The board may authorize examinations of applicants as orthotists, prosthetists, or pedorthists at times and places as it may determine. The examination of applicants shall be of a character to fairly test the qualifications of the applicant to practice orthotics, prosthetics, or pedorthics.

(b) Applicants for examination as orthotists, prosthetists, and pedorthists shall be required to pay, either to the division or the designated testing service, a fee covering the cost of providing the examination. Failure to appear for the examination on the scheduled date at the time and place specified after the applicant's application for examination has been received and acknowledged by the division or the designated testing service shall result in the forfeiture of the examination fee.

(c) If an applicant neglects, fails, or refuses to take an examination or fails to pass any required examination for a license under this act within three (3) years after filing an application, the application shall be denied. All fees are nonrefundable. The applicant may make a new application for examination accompanied by the required fee and must furnish proof of meeting qualifications for licensure in effect at the time of new application.

(d) The board shall set by rule the maximum number of attempts that an applicant may make to pass the examination within a specified period of time. The board shall also determine any further training required before a reexamination.

(e) The division, with the approval of the board, may employ consultants for the purpose of preparing and conducting examinations. An applicant for an examination as an orthotist, a prosthetist, or pedorthist shall be required to pay, either to the division or to the designated testing service, a fee covering the cost of providing the examination.

SECTION 11.

(a) No person shall work as an assistant to an orthotist, prosthetist, or prosthetist/orthotist and provide patient care services or fabrication of orthoses or prostheses, unless a licensed orthotist or prosthetist supervises such person.

(b) No person shall work as a technician, as defined in this act, unless the work is performed under the supervision of a person licensed under this act.

SECTION 12.

(a) Until January 1, 2007, a person certified by the American Board for Certification in Orthotics and Prosthetics, Inc., with the title of Certified Orthotist (CO), Certified Prosthetist (CP), or Certified Orthotist-Prosthetist (CPO) or The Board for Orthotist/Prosthetist Certification with the title of Board of Orthotic Certification – Orthotist (BOCO) or Board of Certification – Prosthetist (BOCP) or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and shall be granted orthotic or prosthetic licensure under this act upon payment of the required fee. After that date, any applicant for licensure as an orthotist or a prosthetist shall meet the requirements of Section 9(a).

(b) Until January 1, 2007, a person certified as a Certified Pedorthist (CPED) by the Board of Certification in Pedorthics, Incorporated, or a person certified as a CO, CP or CPO by the American Board for Certification in Orthotics and Prosthetics, Inc. or certified as a BOCO or BOCP by the Board for Orthotist/Prosthetist Certification or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and shall be granted pedorthic licensure under this act upon payment of the required fee. After that date, any applicant for licensure as a pedorthist shall meet the requirements of Section 9(b).

(c) On and after January 1, 2007, no person shall practice orthotics, prosthetics, or pedorthics in this state and hold himself or herself out as being able to practice either profession, unless such person is licensed in accordance with Section 9.

(d) Notwithstanding any other provision of this act to the contrary, a person who has practiced full-time for a minimum of the past three (3) years in a prosthetic/orthotic facility as an orthotist, prosthetist, or in a pedorthic facility as a pedorthist on the effective date of this act may file an application with the board within sixty (60) days after the

enforcement of this section begins pursuant to Section 13 in order to continue to practice orthotics, prosthetics, or pedorthics. The applicant shall be issued a license to practice orthotics, prosthetics, or pedorthics under the provisions of this act without examination upon receipt by the division of payment of the licensing fee required under Section 18 and after the board has completed an investigation of the applicant's work history. The board shall complete its investigation for the purposes of this section within three (3) months of the date of the application. The investigation may include, but is not limited to, completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.

SECTION 13. The licensure requirements of Sections 9, 11, and 12 shall not be enforced until twelve (12) months after the adoption of final administrative rules for this act.

SECTION 14. A licensed orthotist or pedorthist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician or podiatrist. A licensed prosthetist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician.

SECTION 15.

(a) The expiration date and renewal period for each license issued under this act shall be set by rule of the division. The board shall establish continuing education requirements for the renewal of a license. Continuing education requirements shall be based on current CEU requirements by the three (3) certifying agencies referenced above but shall not exceed the minimum ABC requirements divided by five (5) for any twelve-month period.

(b) A person who has permitted such person's license to expire or whose license is on inactive status may have such person's license restored by:

(1) Making application to the board;

(2) Filing proof acceptable to the board of such person's fitness to have the license restored including, but not limited to, sworn evidence certifying to active practice in another jurisdiction satisfactory to the board; and

(3) Paying the required restoration fee. If the person has not maintained an active practice in another jurisdiction satisfactory to the board, the board shall determine, by an evaluation program established by rule, such person's fitness to resume active status and may require the person to complete a period of evaluated clinical experience and may require successful completion of an examination.

(c) A person whose license expired while such person was in federal service on active duty within the armed forces of the United States or with the state militia called into service or training or in training or education under the supervision of the United States preliminary to induction into military service may have the license renewed or restored without paying a lapsed renewal fee if, within two (2) years after termination from the service, training, or education, except under conditions other than honorable, such person furnished the department with satisfactory evidence that such person has been so engaged and that the service, training, or education has been terminated.

SECTION 16. A person who notifies the division in writing on forms prescribed by the division may elect to place such person's license on an inactive status and shall, subject to rules of the department, be excused from payment of renewal fees until such person notifies the department in writing of the desire to resume active status. A person requesting restoration from inactive status shall be required to pay all past and current renewal fees and professional taxes and shall be required to restore the license as provided in Section 15. An orthotist, prosthetist, or pedorthist whose license is on inactive status shall not practice orthotics, prosthetics, or pedorthics in this state.

SECTION 17. The board may, at its discretion, license as an orthotist, prosthetist, or pedorthist, without examination and on payment of the required fee, an applicant who is an orthotist, prosthetist, or pedorthist who is:

(1) Licensed under the laws of another state, territory, or country, if the requirements for licensure in that state, territory, or country in which the applicant was licensed were, at the date of licensure, substantially equal to the requirements in force in this state on that date; or

(2) Certified by a national certification organization with educational and testing standards equal to or more stringent than the licensing requirements of this state.

SECTION 18.

The division shall provide by rule for a schedule of fees to be paid for licenses by all applicants. All fees are not refundable.

SECTION 19. Nothing in this act shall restrict licensees from forming professional service corporations or other business entities authorized under the laws of this state.

SECTION 20.

(a) The division may refuse to issue or renew a license, may revoke or suspend a license, or may suspend, place on probation, censure, or reprimand a licensee for one (1) or any combination of the following:

(1) Making a material misstatement in furnishing information to the division or the board;

(2) Violations of or negligent or intentional disregard of this act or its rules;

(3) Conviction of any crime that under the laws of the United States or of a state or territory of the United States is a felony or a misdemeanor, an essential element of which is dishonesty, or of a crime that is directly related to the practice of the profession;

(4) Making a misrepresentation for the purpose of obtaining a license;

(5) A pattern of practice or other behavior that demonstrates incapacity or incompetence to practice under this act;

(6) Gross negligence under this act;

- (7) Knowingly aiding or assisting another person in violating a provision of this act or its rules;
- (8) Failing to provide information within sixty (60) days in response to a written request made by the board or division;
- (9) Engaging in dishonorable, unethical, or unprofessional conduct or conduct of a character likely to deceive, defraud, or harm the public;
- (10) Habitual intoxication or addiction to the use of illegal drugs that is a danger to patient care;
- (11) Discipline by another state or territory of the United States, the federal government, or foreign nation, if at least one (1) of the grounds for the discipline is the same or substantially equivalent to one set forth in this section;
- (12) Directly or indirectly giving to or receiving from a person, firm, corporation, partnership, or association a fee, commission, rebate, or other form of compensation for professional services not actually or personally rendered;
- (13) A finding by the board that the licensee, whose license has been placed on probationary status, has violated the terms of probation;
- (14) Abandonment of a patient or client;
- (15) Willfully making or filing false records or reports in such licensee's practice including, but not limited to, false records filed with state agencies or departments;
- (16) Willfully failing to report an instance of suspected child abuse or neglect as required by law;
- (17) Impairment that results in the inability to practice the profession with reasonable judgment, skill, or safety; or
- (18) Solicitation of professional services using false or misleading advertising.

(b) The determination by a circuit court that a licensee is subject to involuntary admission or judicial admission for mental illness operates as an automatic suspension. The suspension will end only upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and the issuance of a court order so finding and discharging the patient and the recommendation of the board to the director that the licensee or registrant be allowed to resume such person's practice.

(c)

(1) In enforcing this section, the division or board upon a showing of a possible violation, may compel an individual licensed to practice under this act, or who has applied for licensure under this act, to submit to a mental or physical examination, or both, as required by and at the expense of the division. The division or board may order the examining physician to present testimony concerning the mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The board or division shall specifically designate the examining physicians. The individual to be examined may have, at such person's own expense, another physician of such person's choice present during all aspects of this examination. A physician licensed to practice medicine in all its branches shall perform the examination. Failure of an individual to submit to a mental or physical examination, when directed, shall be grounds for suspension of such person's license until the individual submits to the examination of the division finds, after notice and hearing, that the refusal to submit to the examination was without reasonable cause.

(2) If the division or board finds an individual unable to practice because of the reasons set forth in this section, the division or board may require that individual to submit to care, counseling, or treatment by physicians approved by the division or board, as a condition, term, or restriction for continued, reinstated,

or renewed licensure to practice; or, in lieu of care, counseling, or treatment, the division may file, or the board may recommend to the division to file, a complaint to immediately suspend, revoke, or otherwise discipline the license of the individual. An individual whose license was granted, continued, reinstated, renewed, disciplined or supervised subject to such terms, conditions, or restrictions, and who fails to comply with such terms, conditions, or restrictions, shall be referred to the director for a determination as to whether the individual shall have the license suspended immediately, pending a hearing by the board.

(3) In instances in which the director immediately suspends a person's license under this section, a hearing on that person's license must be convened by the division within fifteen (15) days after the suspension and completed without appreciable delay. The division and board shall have the authority to review the subject individual's record of treatment and counseling regarding the impairment to the extent permitted by applicable state and federal statutes and regulations safeguarding the confidentiality of medical records. An individual licensed under this act and affected under this section shall be afforded an opportunity to demonstrate to the division or board that such person can resume practice in compliance with acceptable and prevailing standards under the provisions of such person's license.

SECTION 21.

(a) If any person violates a provision of this act, the director may, in the name of the people of the state petition for an order enjoining the violation or for an order enforcing compliance with this act. Upon the filing of a verified petition in the circuit court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin the violation pending a hearing. If it is established that the person has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this act.

(b) If a person practices as an orthotist, prosthetist, or pedorthist and holds himself or herself out as an orthotist, prosthetist, or pedorthist without being licensed under the provisions of this act, then any other licensed orthotist, prosthetist, or pedorthist, any interested party, or any person injured by the person may, in addition to the director, petition for relief as provided in subsection (a).

(c) Whenever in the opinion of the director a person violates a provision of this act, the director may issue a show cause order to cease and desist against such person. The order shall clearly set forth the grounds relied upon by the director and shall provide a period of thirty (30) days from the date of the order to respond to the division, unless circumstances warrant quicker action by a finding of the director. Failure to answer shall cause an order to cease and desist to be issued immediately.

SECTION 22. The division may investigate the actions of an applicant or of a person or persons holding or claiming to hold a license. Before refusing to issue or renew a license, the division shall, at least ten (10) days prior to the date set for the hearing, notify in writing the applicant for or holder of a license of the nature of the charges and that a hearing will be held on the date designated. The written notice may be served by personal delivery or by certified or registered mail to the respondent at the address disclosed on such person's last notification to the division. At the time and place fixed in the notice, the board shall proceed to hear the charges. The parties or their counsel shall be afforded ample opportunity to present statements, testimony, evidence, and argument that may be pertinent to the charges or to the defense to the charges. The board may continue the hearing from time to time.

SECTION 23. The division, at its own expense, shall preserve a record of all proceedings at the formal hearing of a case involving the refusal to issue or renew a license. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the division, and orders of the board shall be in the record of the proceeding.

SECTION 24. A circuit court may, upon application of the director or the director's designee or the applicant or licensee against whom proceedings under Section 23 of this act are

pending, enter an order requiring the attendance of witnesses and their testimony and requiring the production of documents, papers, files, books, and records in connection with a hearing or investigation. The court may compel obedience to its order through contempt proceedings.

SECTION 25. A board finding is not admissible in evidence against the person in a criminal prosecution brought for a violation of this act, but the hearing and finding are not a bar to a criminal prosecution brought for a violation of this act.

SECTION 26. In any case involving the refusal to issue or renew a license or the discipline of a licensee, a copy of the board report shall be served upon the respondent by the division, either personally or as provided in this act for the service of the notice of hearing. Within twenty (20) days after service, the respondent may present to the division a motion in writing for a rehearing, which shall specify the particular grounds for rehearing. If no motion for rehearing is filed, then upon the expiration of the time specified for filing the motion, or if a motion for rehearing is denied, upon the denial, the director may enter an order in accordance with recommendations of the board, except as provided in Section 33. If the respondent orders from the reporting service and pays for a transcript of the record within the time for filing a motion for rehearing, the twenty-day period within which the motion may be filed shall commence upon the delivery of the transcript to the respondent.

SECTION 27. Whenever the director is not satisfied that substantial justice has been done in the revocation, suspension, or refusal to issue or renew a license the director may order a rehearing by the same or other examiners.

SECTION 28. The director shall have the authority to appoint an attorney licensed to practice law in the state of Tennessee to serve as a hearing officer in an action for refusal to issue or renew a license or to discipline a licensee. The hearing officer shall have full authority to conduct the hearing. The hearing officer shall report such officer's findings and recommendations to the board and the director. The board shall have sixty (60) days from receipt of the report to review the report of the hearing officer and present its findings of fact, conclusions of law, and recommendations to the director. If the board fails to present its report within the sixty-day period, the director shall issue an order based on the report of the hearing officer. If the director

determines that the board's report is contrary to the manifest weight of the evidence, the director may issue an order in contravention of the board's report. Nothing in this act precludes the board from appointing a private hearing officer or arbitrator from a list of knowledgeable impartial persons to adjudicate issues dealing with complaints regarding licensee competence. The board will first order the staff to attempt to mediate the dispute before an arbitrator is appointed. The arbitrator's decision will be final to the extent permitted by law.

SECTION 29.

An order or a certified copy of an order, over the seal of the department and purporting to be signed by the director, shall be prima facie proof:

- (1) That the signature is the genuine signature of the director;
- (2) That the director is duly appointed and qualified; and
- (3) That the board and its members are qualified to act.

SECTION 30. At any time after the suspension or revocation of any license, the board may restore the license to the accused person upon the written recommendation of the division unless, after an investigation and a hearing, the board determines that restoration is not in the public interest.

SECTION 31. Upon the revocation or suspension of a license, the licensee shall immediately surrender the license to the board, and if the licensee fails to do so, the division shall have the right to seize the license.

SECTION 32. The director may temporarily suspend the license of an orthotist, prosthetist, or pedorthist without a hearing simultaneously with the institution of proceedings for a hearing provided for in Section 20 if the director finds that evidence indicates that a licensee's continuation in practice would constitute an imminent danger to the public. If the director temporarily suspends a license without a hearing, a hearing by the board must be held within thirty (30) days after the suspension.

SECTION 33. All final administrative decisions of the division are subject to judicial review pursuant to the provisions of the Uniform Administrative Procedures Act compiled in Tennessee Code Annotated, Title 4, Chapter 5. Proceedings for judicial review shall be commenced in the circuit court of the county in which the party applying for review resides, but if the party is not a resident of this state, the venue shall be in Davidson County.

SECTION 34. The department shall not be required to certify any record to the court or file any answer in court or otherwise appear in any court in a judicial review proceeding unless there is filed in the court with the complaint a receipt from the department acknowledging payment of the costs of furnishing and certifying the record, which shall be computed at the rate of twenty cents (\$.20) per page of the record. Failure on the part of a plaintiff to file a receipt in court shall be grounds for dismissal of the action.

SECTION 35.

(a) A violation of this act is a Class B misdemeanor for a first offense. A violation of this act for a second or subsequent offense is a Class E felony.

(b) Any person who has been enjoined by a court of competent jurisdiction from performing any acts or rendering any services which constitute the practice of orthotics, prosthetics or pedorthics as defined by this act, who thereafter willfully violates the terms of the injunction by again performing such acts or rendering such services, commits an offense. A violation of this subsection is a Class E felony.

SECTION 36. All proceedings for disciplinary action against a licensee under this chapter shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 37. It is declared to be the public policy of this state, that a power or function set forth in this act to be exercised by the state is an exclusive state power or function. No power or function granted under this act shall be exercised concurrently, either directly or indirectly, by a unit of local government, including home rule units, except as otherwise provided in this act.

SECTION 38. All individuals licensed under this act shall be exempted from service as jurors in any of the courts.

SECTION 39. Tennessee Code Annotated, Section 4-29-227(a), is amended by adding the following as a new subdivision:

() Tennessee board of orthotics, prosthetics, and podorthics, created by this act;

SECTION 40. This act shall take effect January 1, 2005, the public welfare requiring it.